

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25054

Docket No. 44792

99-1-98-1-U-2062

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company (former CNW)

STATEMENT OF CLAIM:

"Claim on behalf of Engineer E. O. Smart, North Western Transportation Company, for compensation for all lost time including time spent at the investigation, that he be reimbursed for any and all medical and dental expenses incurred during his suspension and that this incident be removed from claimant's personal record and he be removed from the Union Pacific Discipline System known as Upgrade when he was investigated on the following charge:

Your violation of Rule 1.6 and 1.7 of the GCOR, when at approximately 10:20 P.M., Sept. 17, 1997, in the locker room of the Clinton, Iowa west yard office, you allegedly became quarrelsome and allegedly entered into an altercation with another employee.

Claim premised on the 1996 BLE UP system Discipline Agreement attached as Employee's Exhibit A."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant E. O. Smart is a former Chicago North Western Engineer now employed by the Union Pacific Railroad Company working out of Clinton, Iowa. On September 17, 1997, Claimant and Engineer Guy Gamble became involved in a confrontation in the West Yard Office. Both Engineers became quarrelsome; both cursed at each other and both pushed, shoved, and struck each other. Both Engineers had charges brought against them and both were dismissed from Carrier's service. Engineer Gamble took his case before Public Law Board 5089, Francis X. Quinn, Chairman. The complete Award No. 38 issued by Chairman Quinn in the matter reads as follows:

"Statement of Claim

Claim of Proviso Service Unit Engineer G. E. Gamble for pay for all time lost and removal of Level 5 discipline from his personal record.

Findings

A review of the record minimizes the Claimant's culpability, and the discipline was not commensurate with Claimant's culpability. Therefore, discipline is reduced to three (3) months' suspension.

Award

Claim sustained in part. Discipline is reduced to three (3) months."

This Board has extensively reviewed the total record of this case. It has weighed all of the procedural allegations of violations by both sides as well as the details of the hearing transcripts. While this Board may not have decided the instant case as Carrier did, it has concluded that given the involvement of both Claimant and Engineer Gamble in the confrontation that was the basis for each to initially be dismissed, it is difficult not to conclude (after a complete review of the incident by the parties, as well as by Neutral reviewers) that both Engineer Gamble and Claimant should end up with the same level

of discipline. It is therefore this Board's directive that Claimant's penalty in this instance should be reduced to a three-month Suspension, as was ultimately assessed Engineer Gamble. Claimant shall be maintained in Carrier's Upgrade policy in no worse a position than was Gamble.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 22nd day of September 1999.